HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1271 (S/S) year 2003

Constable 20 C.P. Manoj
Kumar Malik and others.

Versus

Union of India

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 30.10.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1271 (S/S) 2003

Constable 20 C.P. Manoj
Kumar Malik and others ….Petitioners

Vs.

Union of India ….Respondents

Counsel for the petitioner Sh. Vivek Shukla
Counsel for the Respondent No.1 Sh. Rakesh Thapliyal and Prakash Bisht.
Counsel for the State –Standing Counsel.

Dated:-30.10.2003

Hon'ble Rajesh Tandon, J.

Heard Counsel for the petitioners Shri Vivek Shukla has present on behalf of respondent No. 1. On behalf of the respondents No's. 2,3,and 4 Standing Counsel is present.

Heard counsel for the parties.

Brief facts giving rise to the present writ petition are that the petitioners are constables or Head constables in G,R.P. or in Civil Police and are posted in the District Haridwar.

The grievances of the petitioners are that they have opted for Uttar Pradesh after the formation of Uttaranchal State under Uttar Pradesh Reorganization Act, 2000. The petitioners have stated that they have given their options well within time for their posting for Uttar Pradesh. It was stated by the Petitioners that their options have not been considered by the advisory committee as yet.

Counsel for the petitioners have also prayed that they may be relieved from Uttaranchal to Uttar Pradesh.

Counsel for the petitioners have stated that the Central Govt. has not framed any policy of final allocation and as such the petitioners are suffering due to inaction on the part of the Central Govt.

Section 73 of the Uttar Pradesh Reorganization Act, 2000 provides that every person shall continue to serve provisionally and thereafter the Central Government shall determine the final allocation. for service. Section 73 (1), (2), (3) reads as under: -

"Provisions relating to other services. – (1) Every person who immediately before the appointed day is serving in connection with the affairs of the existing State of Uttar Pradesh shall, on and from that day provisionally continue to serve in connection with the affairs of the State of Uttar Pradesh unless he is required, by general or special order of the Central Government to serve provisionally in connection with the affairs of the State of Uttaranchal:

Provided that every direction under this Sub-section issued after the expiry of a period of one year from the appointed day shall be issued with the consultation of the Governments of the successor States.

(2) As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect.

(3) Every person who is finally allotted under the provisions of sub-section (2) to a successor State, shall, if he is not already serving therein be made available for serving in the successor State from such date as may be agreed upon between the Governments concerned or

in default of such agreement, as may be determined by the Central Government."

The advisory committee has been constituted under Uttar Pradesh Reorganization act 2000 by virtue of section 76 of the act. It reads as under: -

"Advisory Committees. -The Central Government ma, be order, establish one or more Advisory Committees for the purpose of assisting it in regard to –

(a) the discharge of any of its functions under this part; and

(b) the ensuring of fair and equitable treatment to all persons affected by the provisions of this Part and the proper consideration of any representations made by such persons.

Counsel for the petitioners has also referred section 77 of the Uttar Pradesh Reorganization act 2000 with referred to the power of the Central Government. It reads as under: -

"Power of Central Government to give directions- The Central Government may give, such directions to the State Government of Uttar Pradesh and the State Government of Uttaranchal as may appear to it to be necessary for the purpose of giving effect to the forgoing provisions of this Part and the State Government shall comply with such directions."

The grievances of the petitioners are that they may be directed to be relieved in pursuance of sub-clause 2 of section 73 for State of Uttar Pradesh where they have given their option.

In Writ Petition No.457 (S/B) 2003 Udai Pratap Singh Vs. State of U.P. the Divisional Bench of this court has passed the following order:-

" Under Section 73(2), the Central Government is given the power to allocate the cadres by general or special order of allotment

between the two States. Section 76 provides for setting up of an Advisory Committee to assist the Central Government. By the impugned order dated 11th September 2002, the Central Government has issued directions allocating the various cadres between the two states. The Central Government has issued these directions pursuant to the authority given by the Legislature to the Central Government."

" The Central Government had constituted an Advisory Committee under Section 76. That Committee submitted its report on 28th April 2001/10th May 2001. Their report has been accepted by the Central Government as indicated by letter dated 4th September 2001 (annexure-4). We may clarify that the report of the Advisory Committee has not been fully accepted by the Central Government."

The Division Bench in Writ Petition No. 451(S/B)/2003 Narendra Kumar Vs. State of Uttaranchal has passed the following ordser:-

:Under Section 73 of the U. P. Reorganization Act, 2000, final allocation of all State Services personnel between the successor States shall be decided by the Central Government. Till date, that decision has not been taken. Therefore, the petition is premature."

Similar matter was also decided by the Bench consisting of Hon'ble P.C Verma J. His Lordship has passed the following order:-

"Heard Learned Counsel for the parties. The controversy is squarely covered by the order passed by Division Bench of this Court in W.P. No. 1426 (S/B) of 2001, Mulayam Singh Vs. State of Uttaranchal and others, on 3-6-2003. The petitioners are also relegated to approach the Advisory Board with fresh representation and same be disposed of as observes in the aforesaid writ petition. With the aforesaid observation, the writ petition is disposed of."

In the light of the aforesaid observations the petitioners are permitted to make the representation and the advisory committee shall pass suitable orders. The Counsel for the Union Of India has submitted that in view of the directions of this Honorable Court from time to time the advisory committee of the Central Government is taking suitable steps to finally allocate the person who have given their options for State of U.P. The petitioners therefore shall approach the advisory committee who shall consider the same in accordance with law.

The representations along with their options shall be considered by the advisory committee of the Union of India for relieving them for the State of U.P. The representation of the petitioner shall be disposed of within a period of 6 weeks from the date of certified copy of the order.

With the aforesaid observation the writ petition is disposed of. There will be no order as to costs.

(Rajesh Tandon, J.)

Dated:- 30-10-2003

Mohit